

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 9 August 2023

**Public Authority:** Bristol City Council  
**Address:** The Council House  
College Green  
Bristol  
BS1 5RR

#### **Decision (including any steps ordered)**

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1. The complainant has requested register of interest forms for six members of council staff. Bristol City Council (the Council) denied holding forms for two of the individuals and applied section 40(2) and section 41 of FOIA to withhold the four forms that it does hold.
2. The Commissioner's decision is that:
  - The Council is entitled to withhold some, but not all of the information withheld under section 40(2) of FOIA, (personal information). Specifically his decision is that the Council is entitled to rely on section 40(2) to withhold the entire form for one non-senior member of staff, the signatures on each of the three forms relating to senior staff, and a small amount of information on one of the forms for a senior member of staff that relates to their personal rather than professional life. The Council is however, not entitled to rely on section 40(2) to withhold the remaining information on the three forms relating to senior staff members.
  - The exemption under section 41 (information supplied in confidence) is not engaged with respect to any of the withheld information.

3. The Commissioner requires the Council to take the following steps to ensure compliance with the legislation.
  - Disclose the information for which the section 40(2) exemption is not engaged as described in paragraph 2 of this decision notice.
4. The Council must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

### **Request and response**

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5. On 31 December 2022, the complainant wrote to the Council and requested information in the following terms:

“Under the Freedom of Information Act 2000 I wish to see the following:

Full copies of all declarations/registers of interests forms (paper and digital) submitted by the following persons:

  - [six names and job titles redacted]”
6. The Council responded on 7 February 2023, stating that it held the information but was withholding it under section 40(2) of FOIA.
7. Following an internal review the Council wrote to the complainant on 15 March 2023, upholding its original decision.

### **Scope of the case**

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8. The complainant contacted the Commissioner on 19 March 2023, complaining that the Council was wrong to refuse the request under section 40(2) of FOIA. He stated that other public bodies publish registers of interests for senior staff and provided examples.
9. Following correspondence with the Commissioner, the Council confirmed that, of the six individuals listed in the request, it held register of interest forms for four.

10. During the course of the investigation the Council revised its response, stating that it was applying both section 40(2) (personal information) and section 41 (information provided in confidence) to withhold the requested information.
11. The Commissioner considers that the scope of his investigation is to consider if the Council was correct to withhold the requested information under section 40(2) and/or section 41 of FOIA for the four individuals for which it holds the requested information.

## **Reasons for decision**

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### **Section 40(2) – third party personal data**

12. This reasoning covers whether the Council is entitled to rely on section 40(2) of FOIA to refuse to provide the requested information.
13. This section provides an exemption for information that is the personal data of an individual other than the requester, and where the disclosure of that personal information would be in breach of any of the data protection principles.
14. Section 3(2) of the Data Protection Act 2018 defines personal data as:  
“any information relating to an identified or identifiable living individual.”
15. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.
16. In this case, the withheld information is copies of register of interest forms for four members of staff.
17. The Commissioner has reviewed the withheld information and is satisfied that it is the personal data of staff members listed in the request as it both relates to, and identifies, those individuals.
18. The next step is to consider whether disclosure of this personal data would be in breach of any of the data protection principles. The Commissioner has focussed here on principle (a), which states:  
“Personal data shall be processed lawfully, fairly and in a transparent manner in relation to the data subject.”

19. In the case of an FOIA request, the personal data is processed when it is disclosed in response to the request. This means that the information can only be disclosed if to do so would be lawful, fair and transparent.

### **Legitimate interest**

20. When considering whether the disclosure of personal information would be lawful, the Commissioner must consider whether there is a legitimate interest in disclosing the information, whether disclosure of the information is necessary, and whether these interests override the rights and freedoms of the individuals whose personal information it is.
21. The Commissioner considers that the complainant is pursuing a legitimate interest as the request relates to transparency around decision making and possible conflicts of interest, and that disclosure of the requested information, except for signatures, is necessary to meet that legitimate interest.
22. The Commissioner does not consider that disclosure of the signatures is necessary to meet the legitimate interest and so the Commissioner's decision is that section 40(2) is engaged with respect to signatures.
23. For the withheld information other than the signatures the Commissioner has gone on to consider the balancing test.

### **The Council's Position**

24. The Council acknowledges the legitimate interests of the requester and that disclosure would be necessary to meet those interests. However, it considers the interests, rights and freedoms of the individuals outweigh the requester's legitimate interests.
25. It stated that it considers that disclosure of this information would be outside of the reasonable expectations of the individuals listed, because its internal guidance relating to register of interest forms does not at any point, state specifically that this information might be disclosed as part of a freedom of information request.
26. The Council concluded that disclosure would therefore not be within the reasonable expectations of the individuals involved, and would not therefore be 'fair' or 'lawful'.

### **The Commissioner's Decision**

27. In the Commissioner's view, a key issue when considering the balancing test is whether the individuals concerned have a reasonable expectation that their information will not be disclosed.

28. In considering the Council's arguments relating to the rights and freedoms of the individuals involved, the Commissioner considers that the decision in case reference [FS50359348](#), and the findings of the associated [First Tier Tribunal](#) (FTT) case is relevant here.
29. In its findings the FTT made a clear distinction between the expectations of senior staff and others, stating that less senior staff would not have an expectation that their register of interest forms might be disclosed.
30. The Council confirmed that employees at Director level or above are considered to be 'senior' staff. Therefore, of the four individuals for whom they hold a register of interest form, three would be considered 'senior'.
31. As in the FTT case, the Council argued that the various fair processing notices linked to the register of interest forms, stated that information provided would only be shared with a limited number of staff and that this would shape the expectations of those listed in the request. Therefore, wider disclosure would be unfair.
32. The FTT decision stated that, in relation to the disclosure of register of interests relating to senior staff, there is an increased expectation of scrutiny existing at that level. It found that it was therefore fair to disclose some elements on the forms as they related to an individual's professional role.
33. Given the similarities in the arguments put forward by the Council in this case, and in that considered by the FTT, the Commissioner, as part of his investigation, asked the Council to consider why the circumstances in this case are sufficiently different to that considered by the Tribunal as to warrant a different outcome.
34. In its most recent correspondence to the Commissioner, other than stating that the decision of the tribunal is not binding, the Council has not provided any arguments as to why this case is sufficiently different to that considered by the tribunal.
35. It is therefore the decision of the Commissioner that section 40(2) of FOIA is engaged for some of the information within the forms. That is:
  - The signatures, which are not required to meet the legitimate interest;
  - Details of membership of a national conservation charity, as this is deemed to be linked to the individual's personal rather than professional life; and

- The entire form for one non-senior member of staff.
36. However, his decision is also that section 40(2) is not engaged for the remaining information and he has therefore gone on to consider the application of section 41 of FOIA to the remaining information.

**Section 41 – information provided in confidence**

37. The Commissioner's guidance states that, in order for this exemption to apply, four criteria must be met:
- the authority must have obtained the information from another person;
  - its disclosure must constitute a breach of confidence;
  - a legal person must be able to bring an action for the breach of confidence to court;
  - that court action must be likely to succeed
38. The Commissioner accepts that the information contained within the register of interest forms has been supplied by another person and that it therefore meets the first criteria above.
39. Turning to the second criteria, the Council have argued that the various fair processing notices linked to the register of interest forms, imply a measure of confidence, since they do not explicitly state that information provided may be disclosed in relation to a FOIA request.
40. The fair processing notices provided by the Council, provide general information relating to the internal storage of the forms, stating that they will be held by the Monitoring Officer with the "required level of confidence".
41. The Commissioner does not agree that the fair processing notices provide a level of confidence beyond what might reasonably be expected by senior members of the Council. This is because, under FOIA, there is a general understanding that any information held by public authorities might be disclosable under the legislation.
42. Given that senior officers within the Council can be expected to understand that they would be liable to a higher level of scrutiny, transparency and accountability as they have responsibility for decision making, it is the opinion of the Commissioner that a general statement relating to how information is held would not imply a measure of confidence beyond what would be expected by senior officers.

43. It is the decision of the Commissioner that disclosure of the information in question cannot be said to constitute a breach of confidence under FOIA and that therefore part two of the test is not met.
44. As part two of the test is not met, the Commissioner has not gone on to consider the rest of the tests for this part of the information and his decision is that section 41 is not engaged in relation to the information described at paragraph two of this decision notice.
45. It is therefore the decision of the Commissioner that the information described in paragraph two of this decision notice should be disclosed.

## **Right of appeal**

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46. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)  
GRC & GRP Tribunals,  
PO Box 9300,  
LEICESTER,  
LE1 8DJ

Tel: 0203 936 8963  
Fax: 0870 739 5836  
Email: [grc@justice.gov.uk](mailto:grc@justice.gov.uk)  
Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

47. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.

48. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

**Signed .....**

**Ben Tomes**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
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**SK9 5AF**